FUEL RESOURCES DEVELOPMENT CO.

IBLA 86-1122 Decided November 19, 1987

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, dismissing a protest of the expiration date of lease W-99409.

Affirmed as modified.

1. Oil and Gas Leases: Assignments or Transfers--Oil and Gas Leases: Extensions

Where a lease achieves a discovery of oil or gas in paying quantities during the third year of its primary term and a partial assignment of this lease occurs during its tenth year, 30 U.S.C. § 187a (1982) does not provide a basis for extending the undeveloped assigned lease segregated by such assignment.

APPEARANCES: Charles Carpenter, Esq., Denver, Colorado, for appellant; Lowell L. Madsen, Esq., Office of the Regional Solicitor, Denver, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Fuel Resources Development Company (Fuelco) has appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated March 28, 1986, dismissing a protest of BLM's determination that lease W-99409 would expire on May 31, 1986. The gist of appellant's statement of reasons on appeal is that BLM has misinterpreted 30 U.S.C. § 187a (1982) and applicable regulations.

Lease W-54625 was issued effective June 1, 1976, and contained 400 acres. On February 3, 1986, BLM approved the partial assignment of record title to 80 acres in this lease from Texaco Producing, Inc. (Texaco), to N. F. Taylor. Pursuant to 30 U.S.C. § 187a (1982), Texaco's partial assignment segregated the assigned and retained portions of this lease, and the 80 acres so assigned were designated as lease W-99409. In approving this partial assignment, BLM stated that lease W-99409 was being transferred to a non-producing status, production having been obtained on lease W-54625 in 1979. BLM also determined

that lease W-99409 would expire on May 31, 1986, in accordance with 43 CFR 3107.5-1. 1/

On January 6, 1986, prior to BLM's approval of Texaco's partial assignment, N. F. Taylor signed form 3106-5, Assignment Affecting Record Title To Oil and Gas Lease, naming Fuelco as the assignee of this same 80-acre parcel, later to be designated lease W-99409. When Fuelco learned through BLM's February 3 action, supra, that lease W-99409 would expire on May 31, 1986, it protested this determination, and BLM's response is the decision on appeal. 2/ BLM issued its response on the same day, March 28, 1986, as it approved Taylor's assignment of lease W-99409 to Fuelco.

In the appealed decision, BLM reaffirmed its earlier determination that lease W-99409 would expire on May 31, 1986, but acknowledged, in accordance with the protest, that 43 CFR 3107.5-1 was inapplicable to the facts at hand. That regulation states:

> § 3107.5-1 Extension after discovery on other segregated portions.
>
> Any lease segregated by assignment, including the retained portion, shall continue in effect for the primary term of the original lease, or for 2 years after the date of first discovery of oil or gas in paying quantities upon any other segregated portion of the original lease, whichever is the longer period.

BLM found this regulation to be inapplicable because it "applies only to segregations which precede the date of first production."

Appellant's statement of reasons recites that the 16-21 Mikes Draw well was completed in the SE 1/4 SE 1/4 sec. 21, T. 35 N., R. 70 W., sixth principal meridian, on January 22, 1979, and has produced continuously in commercial quantities ever since. This well was located within lease W-54625 but outside of lease W-99409. 3/ Appellant maintains that upon obtaining production in 1979, lease W-54625 was extended by production.

When lease W-54625 was later partially assigned in February 1986, 30 U.S.C. § 187a (1982) authorized a 2-year extension of the undeveloped W-99409, appellant contends. This statutory provision states in relevant part:

1/ BLM acknowledged that expiration could be avoided by the lessee's drilling over the end of the primary term per 30 U.S.C. § 226(e) (1982). No such drilling is evident from the record.
2/ In, its answer at page 2 note 1, BLM explains that it did not consider Fuelco's "Protest" as an appeal because it determined its Feb. 3, 1986, action to be a "non-appealable notice." It, therefore, entertained Fuelco's objection as a protest and issued its Mar. 28, 1986, decision.
3/ Fuelco also implies that the 2 Miles G well in the SE 1/4 SW 1/4 sec. 25 is on lease W-54625. We do not find this to be the case because it is the W 1/2 SW 1/4 of sec. 25 that is in that lease.

> Any partial assignment of any lease shall segregate the assigned and retained portions thereof * * * and such segregated leases shall continue in full force and effect for the primary term of the original lease, but for not less than two years after the date of discovery of oil or gas in paying quantities upon any other segregated portion of the lands originally subject to such lease. Assignments under this section may also be made of parts of leases which are in their extended term because of any provision of this chapter. Upon the segregation by an assignment of a lease issued after September 2, 1960 and held beyond its primary term by production, actual or suspended, or the payment of compensatory royalty, the segregated lease of an undeveloped, assigned, or retained part shall continue for two years, and so long thereafter as oil or gas is produced in paying quantities. [Emphasis added.]

Appellant maintains that the language underscored above is applicable to the instant facts and causes lease W-99409 to be extended to September 1, 1987, 4/ and for so long thereafter as oil or gas is produced in paying quantities.

In support of its position, appellant examines at some length the above-quoted version of 30 U.S.C. § 187a (1982) and a prior version set forth by the Act of July 29, 1954, P.L. 555, 68 Stat. 583, 585. Fuelco points out that the Act of July 29, 1954, did not limit 2-year extensions to leases held beyond their primary term by production, but instead provided that "[t]he segregated lease of any undeveloped lands shall continue in full force and effect for two years and so long thereafter as oil or gas is produced in paying quantities." When in 1960, this provision was amended by the Act of September 2, 1960, P.L. 86-705, 74 Stat. 781, 790, to read as set forth at 30 U.S.C. § 187a (1982), the effect was to return to "the situation with respect to assignments as it was prior to the 1954 amendments." 5/ 1960 U.S. Code Cong. & Ad. News (USCCAN) 3313, 3317. Appellant quotes from the legislative history 6/ of the 1960 Act to show that producing leases, such as W-54625, were intended to benefit from the terms of the Act:

> 8. An amendment has been made to section 30(a) of the act further to clarify the situation with respect to extension of a lease by the assignment of a portion of it. The Senate's language

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4/ Fuelco arrives at this date by tacking the 2-year extension provided by 30 U.S.C. § 187a (1982) to the effective date of the Texaco-Taylor assignment (Statement of Reasons at 12). Elsewhere in its pleading, Fuelco seeks an extension to Sept. 1, 1988. Id. at 3.

5/ Prior to the 1954 amendments, the law was set forth by the Act of Aug. 8, 1946, c. 916, 60 Stat. 950, 956. This Act read:

"Assignments under this section may also be made of parts of leases which are in their extended term because of production, and the segregated lease of any undeveloped lands shall continue in full force and effect for two years and so long thereafter as oil or gas is produced in paying quantities."

6/ S. Rep. No. 1549, 86th Cong., 2d Sess. (1960).

> would require that only a lease on which there is production, actual or suspended, can be extended for 2 years by assignment. This amendment would result in making the situation with respect to assignments as it was prior to the 1954 amendments. These amendments were interpreted by the then Solicitor as providing that nonproducing, completely inactive leases on "wildcat" lands also could be extended for an additional 2 years, thus giving a leaseholder who may make no effort whatever to develop his lease a full 12-year term merely by assigning a portion. * * *.
>
> However, it is not the intent of the proposed legislation to deprive any holder of a valid existing lease of any rights of assignment he may have under the law as it now stands. The restriction granting an extension by assignment solely to leases in a producing status is intended to apply only to leases issued after the effective date of this act. [Emphasis added.]

1960 USCCAN at 3317.

Appellant also finds support for its position in 43 CFR 3107.5-3. That regulation reads:

> § 3107.5-3 Undeveloped parts of producing leases.
>
> Undeveloped parts of leases retained or assigned out of leases which are extended by production * * * shall continue in effect for 2 years after the effective date of assignment and for so long thereafter as oil or gas is produced in paying quantities.

Lease W-54625 is properly regarded as "extended by production," appellant maintains, because regulation 43 CFR 3107.2-1 provides that "[a] lease shall be extended so long as oil or gas is being produced in paying quantities." As noted above, appellant states that lease W-54625 has at all relevant times produced hydrocarbons in commercial quantities.

Key to Fuelco's appeal is the contention that lease W-54625 at the time of its 1986 partial assignment was held beyond its primary term by production or was extended by production. This contention allows appellant to invoke the 2-year extension provided by the final sentence of 30 U.S.C. § 187a (1982), supra, and by regulation 43 CFR 3107.5-3. Counsel for BLM points out in response that Fuelco errs in this contention and that a different provision of this statute applies. We agree with BLM on both counts and, accordingly, affirm BLM as modified herein.

When lease W-54625 achieved production in 1979 during its primary term, the lease did not then become held beyond its primary term by production. Nor did the lease become extended by production. It remained in its primary term, albeit now in a producing status. When in February 1986, a partial assignment of this lease occurred, lease W-54625 was still in its primary term.

Prior case law of this Department supports these conclusions. Thus, in Conoco, Inc., 80 IBLA 161, 91 I.D. 181 (1984), a case involving partial commitment of a lease to a unit during primary term, the Board held:

> Where production has been obtained on a lease which is in its primary or extended term (other than by reason of production) at the time of commitment of the nonproducing portion of the lease to the unit, the lease is still a lease for a term of years and not a lease for an indefinite term governed by the life of production at the time of segregation by partial commitment. Solicitor's Opinion, M-36592 (Jan. 21, 1960). [Emphasis added.]

80 IBLA at 166, 91 I.D. at 183-84.

Solicitor's Opinion, M-36543 (Jan. 23, 1959), offers additional support for our conclusions. The issue in that opinion was whether commitment to a unit plan of land containing a producing well would extend the uncommitted land for the life of production, where production and partial commitment occurred during the fixed term 7/ of a lease. The Solicitor held that "production from a lease obtained during any fixed term thereof does not convert the fixed term into an indefinite 'so long as' term and does not, unless continued beyond the fixed term, have the effect of extending the base term." Id. at 2. In the present context, this means that production in 1979 did not cause lease W-54625 to then enter an indefinite term continuing so long as production lasted. It remained in a fixed term.

In so concluding, the Solicitor relied on 30 U.S.C. § 226. As presently worded, this statute reads: "[N]oncompetitive leases [shall be] for a primary term of ten years * * *. Each such lease shall continue so long after its primary term as oil or gas is produced in paying quantities." 30 U.S.C. § 226(e) (1982) (emphasis added). We read this statute to mean that an extension of a lease term because of production in paying quantities begins when the primary term ends. 8/

Appellant's arguments based on the legislative history do not compel a different result. The statute makes clear that only leases held beyond their primary term by production, not simply producing leases or leases in a producing status, are entitled to the statutory extension. Moreover, appellant overlooks Conference Report No. 2135 wherein the Managers on the Part of the House stated in precise terms what leases qualify for the statutory extension:

7/ Prior to the 1960 amendments to the Mineral Leasing Act, 30 U.S.C. § 181 (1982), noncompetitive leases had a 5-year fixed term. A 5-year extension was available upon timely application. Act of July 29, 1954, P.L. 555, 68 Stat. 583, 584.

8/ In light of our reading of 30 U.S.C. § 226(e) (1982), regulation 43 CFR 3107.2-1, cited by appellant, is properly read to mean that a lease shall be extended after its primary term so long as oil or gas is produced in paying quantities.

> 12. Section 6 was added by the Senate and agreed to by the conference committee. It repeals the last sentence of section 30a of the Mineral Leasing Act ("The segregated lease of any undeveloped lands shall continue in full force and effect for two years and so long thereafter as oil or gas is produced in paying quantities") so far as future leases are concerned and substitutes for it a provision which, in effect, makes the automatic extension applicable only to leases held beyond their primary term by production or by payment of compensatory royalty. The extension will be applicable to the undeveloped portion of the segregated lease, whether it is the assigned part or the retained part. [Emphasis added.]

1960 USCCAN 3313, 3337.

[1] The effect of our holding that lease W-54625 was in its primary term at the time of partial assignment and was not then held beyond its primary term by production is to deny to Fuelco the 2-year extension granted by the last sentence of 30 U.S.C. § 187a (1982). Also denied to Fuelco is the benefit of 43 CFR 3107.5-3, quoted supra, a regulation based on these lease provisions.

We agree with BLM that the following provision of 30 U.S.C. § 187a (1982) is applicable here:

> Any partial assignment of any lease shall segregate the assigned and retained portions thereof * * *; and such segregated leases shall continue in full force and effect for the primary term of the original lease, but for not less than two years after the date of discovery of oil or gas in paying quantities upon any other segregated portion of the lands originally subject to such lease. [Emphasis added.]

This language indicates that after the 1986 partial assignment, lease W-99409 was to continue for the primary term of the original lease, W-54625, i.e., until May 31, 1986. Discovery having occurred in 1979, the statute could grant lease W-99409 no extension beyond this date. We hold, accordingly, that BLM correctly determined May 31, 1986, to be the expiration date of lease W-99409.

In its decision of March 28, 1986, BLM also stated that regulation 43 CFR 3107.5-1, quoted supra, was inapplicable to the case because it applied "only to segregations which precede the date of first production." BLM appears to have relied on its Manual in so holding. See BLM Manual Handbook 3107-1 at 11. As we stated in JSC Producers, 99 IBLA 164 (1987), we find no basis for such a conclusion, whereby the benefits of that regulation are granted if partial assignment precedes discovery, but not vice versa. BLM's decision is, accordingly, modified to hold that regulation 43 CFR 3107.5-1 is applicable where, as here, discovery precedes partial assignment.

In an alternative argument, Fuelco states that prior to its purchase of lease W-99409 from N.F. Taylor, it contacted BLM and was told that this lease

would receive a 2-year extension upon partial assignment. Fuelco now argues that because its reliance on BLM's representations and on the plain meaning of pertinent statutes and regulations was justified, BLM should be estopped to deny the extension so sought.

Fuelco offers no further facts, such as the identity of the BLM employee who is alleged to have misled it, to allow this Board to determine if affirmative misconduct has occurred on BLM's part. See Heckler v. Community Health Services, 467 U.S. 51 (1984). Moreover, appellant has failed to demonstrate another element of estoppel, that requiring that appellant be ignorant of the true facts. Francis X. Furlong II, 73 IBLA 67, 70 (1983). It is well established that all persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations. 44 U.S.C. §§ 1507, 1510 (1982); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947). As set forth supra, the consequences of a partial assignment during the primary term of the original lease are set forth at 30 U.S.C. § 187a (1982) and 43 CFR 3107.5-1. Because of the knowledge imputed to it, Fuelco cannot successfully claim ignorance of the material facts without presentation of extraordinary circumstances that overcome this presumption. Tom Hurd, 80 IBLA 107, 110 (1984); Francis X. Furlong II, supra at 71. Appellant has offered nothing to overcome this well-established presumption.

In its final argument, appellant asks that the assignments from Texaco to Taylor and from Taylor to Fuelco be revoked and that the parties be permitted to apply for approval of assignments reflecting that operating rights only were intended to be assigned. In support, Fuelco cites Continental Oil Co., 74 I.D. 229 (1967).

In requesting revocation of the above assignments, appellant fails to state whether Texaco and Taylor are agreeable to such action. Indeed, appellant fails to offer any evidence of the intent of the parties. Moreover, as pointed out by counsel for BLM, Continental Oil Co. is clearly distinguishable from these facts. That case involved the rescission of approvals of assignments involving leases in the Outer Continental Shelf. The assignments ostensibly transferred lease interests described by surface area, depth, and product at a time when the Department held assignments by product to be unauthorized. 74 I.D. at 230, 236.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Wyoming State Office is affirmed as modified.

Franklin D. Arness
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Will A. Irwin
Administrative Judge